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ABSTRACT

The National Educational Association (NEA) makes recommendations on the services of franchised cable television stations to schools. The recommendations, in 20 areas, are then compared with existing Federal Communications Commission (FCC) regulations on each point. The recommendations include: a minimum of at least one educational access channel should be made available without cost for the length of the franchise; all cable systems should have a minimum capacity of 20 stations, and these systems should stay abreast of the state of the art in equipment and channel capacity; all cable systems should include a minimal production facility; these facilities should be shared whenever possible between the schools and the cable operator; free cable connections to the system should be provided to all schools and libraries within 100 yards of the trunk line; the franchisee should provide at cost an in-school distribution to multiple classrooms within the schools. Other recommendations cover subjects like two-way capacity, and educational advisory board, interconnection with neighboring cable systems, employment requirements, and protection of subscriber privacy. (JK)

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cable television

Franchise Provisions for Schools

National Education Association Instruction and Professional Development

professional excellence

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To carry out this purpose more effectively, the NEA, through its Representative Assembly, has established a number of long-range goals. This document, prepared by the NEA staff for Instruction and Professional Development, represents a part of the effort of the Association to achieve one of these goals: *professional excellence.*

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CABLE TELEVISION
FRANCHISE PROVISIONS FOR SCHOOLS

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February 1973

CABLE TELEVISION
FRANCHISE PROVISIONS FOR SCHOOLS

A guide for local teacher associations prepared by the Cable and Satellite Team, Instruction and Professional Development, National Education Association.

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PREFACE

The NEA strongly recommends that all local and state education associations actively participate in the local hearings on the awarding of franchises for cable television systems.[1] This document has been prepared as a guide to assist in these association efforts. The recommendations made herein are designed to ensure that the entire educational community will be able to receive maximum benefits from this new technology.

The overwhelming experience to date with the development of cable television in local communities has been the lack of public discussion of the issues involved prior to submission of proposals for award of the franchise. All too often the community has simply reacted to proposals submitted to it by commercial applicants rather than initiating proposals of its own. The public has not been involved in any significant way in decisions as to what should be included in a franchise or in determining the community's requirements for cable spectrum space that are responsive to the community's needs. As a result, many communities have received less than adequate cable television systems and have awarded franchises without adequate protection of the public interest and upon less than adequate franchise agreements. Much is at stake now in the granting of franchises, not only for cable system operators but also for schools and the communities they serve.

It is desirable that before specific franchise terms are considered the community give consideration first to developing a basic overall plan for its telecommunications (broadband communications) services and systems. Such a plan would fulfill both current and future needs for telecommunications services for all segments of community life (educational, residential, business, institutional, government, and citizens-at-large). It would also:

(a) inventory the available communications resources of the area that could be tapped for original program production

(b) specify the types of overall services required, such as the need for two-way services, pay-cable, and interconnections with neighboring systems

(c) delineate the areas to be served by the system—intracity, regional, etc.

(d) outline the appropriate system structure for the community, and its financing

[1] Also sometimes referred to as community antenna television systems (CATV) and/or community information systems.

(e) present a plan for coordination and/or possible integration of the various types of communications systems already in operation or on the drawing board (i.e., on-air broadcasting, cable TV, closed circuit systems, microwave service, Instructional Television Fixed Service systems, videotape/cassette systems)

Time and circumstances, however, may not permit a particular community to evolve such a plan. It may be necessary to move immediately with whatever information is available.

Although it is very difficult to write guidelines that are applicable in all circumstances, this publication sets forth criteria that NEA affiliates might employ in evaluating franchises submitted in their localities. The NEA urges that communities build these criteria, where feasible, or other appropriate criteria, into their own ordinances, once these have been agreed upon after full public discussion of the issues.

The Federal Communications Commission and Cable TV

Cable TV franchises are awarded locally and approved by the FCC under rules and regulations effective March 31, 1972. There is a provision in the rules, however, that permits cable systems in the top 100 markets which were in operation by March 31, 1972, to have five years (until March 31, 1977) or until their franchises expire—whichever comes first—to meet FCC requirements. The recommendations made in this document apply to the awarding of new cable franchises both in communities where there is no cable system service at the present time and in those that have cable service and will be rewriting their cable franchise sometime before March 31, 1977. It is emphasized that those communities that have until March 31, 1977, to rewrite their franchise should have a cable television plan to submit to the franchising authority at least a year in advance for public discussion and review of changes as required. Don't wait until the five years are up!

In its amendments to the rules, issued June 16, 1972, the Commission pointed out that under certain circumstances the FCC may waive any provision of the rules relating to cable television systems, as indicated below:

Appendix A, Part 76—Cable Television Service (June 16, 1972): Reconsideration of Report and Order[2]

Section 76.7 Special Relief

(a) On petition by a cable television system, a franchising authority, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the

[2]Federal Communications Commission. Cable Television Service: Reconsideration of Report and Order. Federal Register, Vol. 37, No. 136, Part II, Friday, July 14, 1972.

> Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

Certain of the criteria listed herein go beyond the minimum rules required by the FCC, but the NEA feels that these criteria are essential to protect a community's educational interests in the emerging technology of cable communications. The NEA therefore urges citizens in all local communities to assess their own needs and determine whether or not a request for a waiver from the FCC on any particular rule would serve the local public interest.

The NEA recognizes that this is a whole new technology and that much remains to be known about its utilization in the educational process. The regulatory picture regarding cable is ever evolving. The FCC itself recognized this situation when it stated in its final rules:

> Cable television is an emerging technology that promises a communications revolution. Inevitably, our regulatory pattern must evolve as cable evolves—and no one can say what the precise dimensions will be.[3]

The NEA also recognizes that in some communities there may be circumstances which would demand that the local franchise contain requirements in excess of what NEA is recommending here; alternatively, in smaller communities, the reverse may be true. If you have any questions or doubts about the application of these recommendations to your community, please feel free to contact Instruction and Professional Development, NEA.

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[3]Federal Communications Commission. Cable Television Service; Cable Television Relay Service (Report and Order). Federal Register, Vol. 37, No. 30, Part II, Saturday, February 12, 1972, para. 189.

CABLE TELEVISION
FRANCHISE PROVISIONS FOR SCHOOLS

The NEA recommends that the following provisions, in order of priority, be included in every franchise issued in every cable system market in order to meet the needs and protect the interests of schools and the public they serve:

1. Educational Access Channels
2. Channel Capacity
3. Local Origination
4. Studio and Production Facilities
5. Cable Drops from the Trunk Line
6. In-School Distribution
7. Two-Way Capacity
8. Interconnection with Head-End
9. Interconnection Between Neighboring Systems
10. Educational Advisory Board
11. Carriage of Instructional Television Fixed Service (ITFS)
12. Carriage of FM Radio Stations
13. Converters for Non-Standard Channels
14. Employment Requirements
15. Franchise Area
16. Subscriber Privacy
17. Length of Franchise
18. Percentage of Franchise Fee
19. Review of Performance
20. Transfer and Assignment Restrictions

1. Educational Access Channels

NEA recommends:
A minimum of at least one educational access channel should be made available without cost for the length of the franchise. Additional channels, both standard and non-standard, should be provided free of charge up to a total of 20 percent of the system's capacity for educational, instructional, governmental, and public access programing, as the schools and the public demonstrate their ability to use these channels. Until such time as a community is able to utilize these channels, the franchisee should be permitted to use them for other purposes. A proviso should be added, however, that the educational community has the right to preempt such use of these channels upon giving six months' notification to the franchisee.

In order to give local educational authorities a perspective on what is involved in the NEA recommendation that 20 percent of a cable system's capacity be reserved free of charge for educational, instructional, governmental, and public access programing, the following chart may be helpful:

No. of Channels on Cable System	FCC Rules Now Provide for Local Access[4]	Access Channels Provided Under NEA's 20% Recommendation	Representing an Access Channel Increase of
30 channels	3 channels	6 channels	3 channels
20	3	4	1
12	3	2.40	0

[4]Leased channels are not included.

The FCC rules have established that one channel be made available free of charge to the local educational community on a five-year experimental basis. Likewise, a local government channel has been reserved free of charge for a similar period. No time limit, however, has been established for the free-of-charge public access channel which has also been set aside by the Commission. The NEA recommends, therefore, that the limitation of the five-year experimental period for the education access channel(s) be removed. The FCC has suggested that a charge should be made to all users of access channels for production costs for programs exceeding five minutes in length. The NEA feels that this is a matter that should be negotiated with the cable operator at the local level.

The question arises then as to what additional channels might be available and under what circumstances. In answer to this question, the FCC in paragraph 126 of its Report and Order sets forth the N+1 principle, encouraging cable television uses that will lead to constantly expanding channel capacity. Cable systems are required in the rules to make additional bandwidth available as the demand arises. In view of these requirements, the NEA is recommending the guaranteed expansion of free access for up to 20 percent of the system capacity. This recommendation would appear to be a reasonable and viable request, entirely consistent with the FCC's own provisions for expanding system capacity and cable's expanding role in our society.

FCC rules provide: One educational access channel is required in all cable systems in the top 100 markets. Use of the educational channel will be without charge from the time subscriber service is inaugurated until five years after the completion of the cable system's basic trunk line. After this developmental period—designed to encourage innovation in the educational uses of television—FCC will determine in consultation with state and local authorities whether to expand or curtail the free use of channels for such purposes or to continue the developmental period. A franchising authority outside a major market may require access service in the franchise, but only to the extent the FCC requires access channels in major markets. The FCC will, however, consider requirements for free or reduced-cost extra public access or educational channels on an experimental basis if the franchising authority shows that such channels "are necessary and capable of being used according to an existing viable plan."

Whenever all of the access channels are in use for 80 percent of the time during any consecutive three-hour period for 6 consecutive weeks, such system shall have 6 months in which to make a new channel available for any and all access purposes.

For specific FCC language on provisions paraphrased above, please see appendix:

1. Excerpts from Report and Order, op. cit., paras. 120-23, 125-26, 130-32, including footnotes 70, 133, 147, 148; Section 76.251(a), (a,5), (a,8), (a,10), and (b).
2. Excerpts from Reconsideration of Report and Order, op. cit., para. 81, including footnote 27.
3. Federal Communications Commission News Release No. 87959, August 22, 1972; questions 5, 6, and 7.

2. Channel Capacity

NEA recommends:
The local franchising authority should require all cable systems to have a minimum capacity of 20 channels and, further, that all systems stay abreast of the state of the art as regards equipment and channel and systems capacity. Because of interference problems, channel capacity will tend to vary in different communities. Local government entities, if they feel their community needs greater channel capacity than is required in the rules, may wish to require more than the potential for a 20-channel system by use of a two- or three-cable system, converters, or both. The best solution to expanded channel capacity is probably to install more than one cable. If two cables are used, each would carry 12 channels, thus making a 24-channel system possible by using a simple switch to select between the two cables.

FCC rules provide: Each cable system in a major television market shall have at least the equivalent of 20 television broadcast channels. The Commission has stated that while it has preempted the area of channel capacity it would not foreclose a system from meeting more stringent local requirements ... "upon a demonstration of need for such channel capacity and the system's ability to provide it." Cities outside major markets may specify a minimum channel capacity, but such capacity may not be in excess of what the Commission requires for systems in major markets. The FCC notes that 40-, 50-, and 60-channel systems are currently being installed in some communities. It notes: "The cost difference between building a 12-channel system and a 20-channel system would not appear to be substantial. We urge cable operators and franchising authorities to consider that future demand may significantly exceed current projections, and we put them on notice that it is our intention to insist on the expansion of cable systems to accommodate all reasonable demands. We wish to proceed conservatively

however, to avoid imposing unreasonable economic burdens on cable operators. Accordingly, we will not require a minimum channel capacity in any except the top 100 markets."

See appendix for specific FCC language on provisions paraphrased above:

Report and Order, op. cit., paras. 118-20, 125-26; Section 76.251 (a) (1).

Reconsideration of Report and Order, op. cit., paras. 75, 79, including footnote 25.

FCC News Release No. 87959, op. cit., questions 1 and 2.

3. Local Origination

NEA recommends:

The opportunity to originate educational programs of a local nature is one of the great advantages that should accrue to educators when cable television arrives. Studio facilities to produce these programs must be available. It is strongly recommended, therefore, that local school authorities insist that a minimal production facility be required of all cable systems. The franchisee should be required to provide for the local origination of cable programs within three years of the granting of a franchise, or whenever 3,500 subscribers are serviced by the system, whichever comes first.

The FCC has suspended its requirement that systems with more than 3,500 subscribers must engage in local origination, and the rule has not been reinstituted.

See appendix:

Report and Order, op. cit., Section 76.201 (a).

4. Studio and Production Facilities

NEA recommends:

Studio and production facilities should be shared wherever possible between the schools and the cable operator. The need for studio facilities and production equipment can be more readily met through mutual agreement, wherein each party lists its resources and a trade-off can be effected that will bring maximum benefit to both parties.

A typical locally produced TV program is likely to originate in the studio built by the cable operator, use cameras and other electronic equipment purchased by the public schools, and be staffed by students in the TV production course offered by the local community college. The cable operator and the educator alike realize that a considerable investment is required to buy adequate

hardware for the production of good television programing. It would seem to be more reasonable, therefore, to cooperate in the use of one relatively sophisticated studio facility rather than to spend limited resources on separate, inadequate efforts.

Where the school system or local college already owns TV production facilities, the cable system about to begin local cablecasting may be a ready tenant or lessee of production services.

FCC rules provide: "It is apparent that our goal of creating a low-cost nondiscriminatory means of access cannot be attained unless members of the public have reasonable production facilities available to them. We expect that many cable systems will have facilities with which to originate programing that will also be available to produce program material for public access. Hopefully, colleges and universities, high schools, recreation departments, churches, unions, and other community groups will have low-cost video-taping equipment for public use. In any event, we are requiring that the cable operator maintain within the franchise area production facilities for use on the public access channel."

The FCC rules require the cable operator to supply only channel space, not studio equipment or facilities, for educational or governmental access. However, the cable operator must provide studio facilities for the public access channel. Local cable operators will in most cases permit educational authorities to use their existing studio facilities under the same conditions offered to users of the public access channel.

See appendix:
Report and Order, op. cit., para. 142.

5. Cable "Drops" from the Trunk Line/Second Set Charges

NEA recommends:
Free cable connections to the cable system should be installed in and provided to all schools and libraries within 100 yards of the trunk line and such public buildings as the local authorities designate, without monthly charge and without second set charges. (The cable system operator makes one connection from a telephone pole or an underground cable to the school building.) The franchisee should provide, at cost, all additional cable, equipment, and labor required to provide drops to schools located beyond 100 yards from the trunk line. These drops will enable each building to receive all programs transmitted by the cable system. This service should be provided without a monthly charge. It should be noted that in many communities the cable operator is required to provide drops to schools free (as in the State of Massachusetts), or below cost (as in some other localities). The school will also want to reserve the right to add additional TV sets without having to pay the second set charges that may be levied against other subscribers.

No FCC regulation on this point.

6. In-School Distribution System to Multiple Classrooms

NEA recommends:
The franchisee should provide, at cost, an in-school distribution system to multiple classrooms within the school. The NEA is recommending this minimum alternative—at cost—because to request more would be an unreasonable financial demand upon some cable operators. NEA feels this matter can be negotiated locally because there are cases in which in-school distribution systems have been provided by the cable operator free or below cost.

No FCC regulation on this point.

7. Two-Way Capacity

NEA recommends:
The franchisee should be required to build into the system initially the capacity for two-way audio return capability on a non-voice basis, with access to two-way voice communications, and eventually to video communications, as the need is demonstrated. The two-way audio-digital return capability on a non-voice basis will make possible initially the exchange of data among a substantial number of users throughout an entire cable television system. The franchising authority should require that when the local community has a viable plan for actual use of a more sophisticated two-way facility the franchisee must expand his system to make this service possible. The NEA feels that this is a very important requirement for schools, inasmuch as cable's most unique feature is its ability to make possible interaction between teacher and learner and between schools in widely separated locations. If cable were not to provide this feature, much of its attraction to the educational community would be lost. The NEA recommends that such return capability be provided initially to schools, libraries, and educational institutions; then expanded gradually to other points on the system, including homes.

FCC rules provide: Cable systems in major television markets must provide the capacity for return communication on at least a non-voice basis. Such construction is now demonstrably feasible. The Commission is not now requiring cable systems to install necessary return communication devices at each subscriber terminal because it feels such a requirement is premature in this early stage of cable's evolution. The Commission has ruled that "it will be sufficient for now that each cable system be constructed with the potential of eventually providing return communication without having to engage in time-consuming and costly system rebuilding." A franchising authority located outside a major television market may require a cable system to maintain a plant having the technical capacity

for non-voice return communications. Where any franchising authority has a plan for actual use of a more sophisticated two-way capability and the cable operator can demonstrate its feasibility both practically and economically, the Commission will consider, in its certificating process, allowing such equipment.

See appendix for specific FCC language on provisions paraphrased above:

Report and Order, op. cit., paras. 128-29; Section 76.251 (a) and (a,3).

Reconsideration of Report and Order, op. cit., para. 79, including footnote 25.

FCC News Release No. 87959, op. cit., questions 3 and 4.

8. Interconnection of Schools with the Cable System's Master Head-End

NEA recommends:

If program origination is desired at an individual school, the ability to originate programs at the school for distribution to other schools or to the general community must be assured by providing in the franchise for interconnection from the school to the cable system's master head-end. Of course, each school must be connected to the head-end in order to communicate with other schools in the same system or in an interconnected system.

No FCC regulation at this point, but paragraphs 142 and 143 of the Commission's rules state that the Commission's "goal of creating a low-cost, nondiscriminatory means of access cannot be attained unless members of the public have reasonable production facilities available to them." The Commission also encourages the use of half-inch videotape and low-cost recording equipment as an inexpensive means of program production for use on cable systems.

See appendix for specific FCC language on provisions paraphrased above:

Report and Order, op. cit., paras. 142 and 143.

9. Interconnection with Neighboring Cable Systems

NEA recommends:

Provisions should be made in the franchise for interconnection of the cable system with neighboring cable systems, master head-end to master head-end, if and when such systems are constructed, in order that schools may be able to share programing and communicate with schools that lie beyond school district and cable franchise boundary lines. This is particularly important where one school district encompasses several cable franchises. Such interconnection is essential also for cost sharing of central facilities and programs.

No FCC regulation on this point, but all FCC policies and statements are favorable to interconnection and would encourage it.

See appendix:
Report and Order, op. cit., Section 78.11 (a).
Reconsideration of Report and Order, op. cit., para. 114.

10. Educational Advisory Board

NEA recommends:
The franchise should stipulate that a cable educational advisory board be established in every community as part of the franchise. This board should consist of representatives of the educational community, including the local education association, public and private schools, public and private universities, libraries, and museums. The functions of the educational advisory board would include, among others:

(a) coordinating all programming to be aired on the educational access channel

(b) evaluating, on a continuing basis, the community's educational needs and the cable system's success in meeting them

(c) ensuring fair and nondiscriminatory availability of educational access channels, so that no group or interest may monopolize their use

(d) developing experimental educational programming

(e) ascertaining availability within the area of educational or other programming and production resources (such as studios with students being trained in communication)

(f) setting fees for the use of production facilities by educational groups

FCC rules provide: "Elaborate suggestions have been made for comprehensive community control plans such as neighborhood origination centers and neighborhood councils to oversee access channels. Here again the Commission will encourage experimentation rather than trying to impose a more formal structure at this time."

See appendix for specific FCC language on provision above:
Report and Order, op. cit., para. 144.

11. ITFS (Instructional Television Fixed Service) and Educational Television Stations

NEA recommends:
The franchisee should be required to connect with the master control of any ITFS system in the franchise area, as requested, or with the studios of the ETV station designated by local schools as their production agency.

FCC rules provide: There is no specific requirement in the present FCC rules that cable system operators must carry ITFS signals. However, cable TV relay stations are authorized to relay television broadcast and related audio signals, the signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting intended for use solely by one or more cable television systems.

See appendix:
Report and Order, op. cit., Section 78.11.

12. Local Educational FM Radio Stations

NEA recommends:
The franchisee should be required to carry all local FM educational radio stations on the cable.

No FCC regulation on this point.

13. Converters for Non-Standard Channels

NEA recommends:
With new electronic equipment in the cable system and with special converters at the schools or other receiving points, it is technically possible to transmit and receive additional television channels whose frequencies are immediately below Channel 2, in the "spectrum gap" between conventional Channels 6 and 7, or above Channel 13. Such channels cannot be used by broadcast television because those frequencies are assigned for other purposes, but they can be used on the cable. Special converters are needed to pick up these channels, which are essentially private. For in-school use, or for special audiences, such as doctors interested in continuing medical education or teachers engaged in in-service education, non-standard channels may be as good or better than standard channels that lack privacy. The franchisee should be asked to provide at cost converters for each TV set at each school, university building, or other special location. Local educational authorities would be well advised to seek competent local engineering advice in this matter.

No FCC regulation on this point.

14. Employment Requirements

NEA recommends:
The franchisee must be an equal opportunity employer.

FCC provides that all cable operators with five or more employees must be an equal opportunity employer. Annual forms must be filed with the FCC, giving detailed information regarding employment policies of each cable television system.

15. Franchise Area

NEA recommends:
Each local franchising agency should make certain that cable becomes available within a reasonable time to all on a nondiscriminatory basis within the area encompassed by the franchise. Every assurance must be made that no part of the community is excluded from the opportunity to receive cable at a reasonable charge. NEA supports the FCC's minimum requirement that the cable system must be built at a rate not less than 20 percent of the total system per year.

FCC rules provide: FCC emphasizes "that provision must be made for cable service to develop equitably and reasonably in all parts of the community. A plan that would bring cable only to the more affluent parts of a city, ignoring the poorer areas, simply could not stand. No broadcast signals would be authorized under such circumstances. While it is obvious that a franchisee cannot build everywhere at once within a designated franchise area, provision must be made that he develop service reasonably and equitably. There are a variety of ways to divide up communities; the matter is one for local judgment.... As a general proposition, we believe that energized trunk cable should be extended to at least 20 percent of the franchise area per year, with the extension to begin within one year after the Commission issues its certificate of compliance. But we have not established 20 percent as an inflexible figure, recognizing that local circumstances may vary."

See appendix for complete text of FCC rules on these points:
Report and Order, op. cit., paras. 180-81.

16. Protection of Subscriber Privacy

NEA recommends:
No service offered to subscribers shall in any way whatever infringe upon their privacy. The cable operator should be required to notify the local franchising authority, the state regulatory commission, if any, and the subscriber affected of any attempt by anyone to eavesdrop, cable tap, or in any way whatever tamper with messages or signals on the cable system. In a real sense, cable is similar to a telephone party line, and safeguards must be written into the franchise to protect the subscriber against the invasion of privacy. The NEA recognizes that, inasmuch as two-way communications promise great benefits to sub-

scribers, certain activities, such as audience polling, utility meter reading, etc., may be considered legitimate. However, they should not be conducted without the expressed approval of the individual subscriber.

Two-way communications are one of cable's strongest features as far as schools are concerned. If school authorities desire privacy in any two-way communication, they should ensure that the franchise will provide them with the right to secure it.

FCC rules provide: "We are not now requiring cable systems to install necessary return communication devices at each subscriber terminal. Such a requirement is premature in this early stage of cable's evolution. It will be sufficient for now that each cable system be constructed with the potential of eventually providing return communication without having to engage in time-consuming and costly system rebuilding. This requirement will be met if a new system is constructed either with the necessary auxiliary equipment (amplifiers and passive devices) or with equipment that could easily be altered to provide return service. When offered, activation of the return service must always be at the subscriber's option." [Emphasis added.]

See appendix:
Report and Order, op. cit., para. 129.

17. Length of Franchise

NEA recommends:
In view of the need to keep cable systems in step with the rapid pace of technological change, NEA recommends that most franchises should be limited to 10 years, with a subsequent renewal period of 5 years upon notice, hearing, and approval of the granting authority.

FCC rules provide: "The initial franchise period shall not exceed fifteen (15) years, and any renewal franchise period shall be of reasonable duration..."

See appendix:
Report and Order, op. cit., para. 182.
Reconsideration of Report and Order, op. cit., para. 111; Section 76.31.

18. Percentage of Franchise Fee for Programming

NEA recommends:
The cable operator should be required to pay an annual fee to the granting authority, based on the gross receipts of the operation of the cable TV system

in the area covered by the franchise. The NEA urges that this fee be set at 5 percent of the gross receipts annually, with at least a minimum of 2 percent of this amount reverting to a special fund to be used by the schools and the public for educational and public access programming. Howard County, Maryland, has included in its ordinance the provision that 5 percent of the gross revenue will be assigned to a citizens advisory committee for local programs.

FCC rules provide: "It is our judgment that maximum franchise fees should be between 3 and 5 percent of gross subscriber revenues. But we believe it more appropriate to specify this percentage range as a general standard, for specific local application. When the fee is in excess of 3 percent (including all forms of consideration, such as initial lump sum payments), the franchising authority is required to submit a showing that the specified fee is appropriate in light of the planned local regulatory program, and the franchisee must demonstrate that the fee will not interfere with its ability to meet the obligations imposed by our rules."

See appendix:
Report and Order, op. cit., paras. 185-86; Section 76.31 (b).
FCC News Release No. 87959, op. cit., question 9.

19. Review of Performance

NEA recommends:
Each franchise should include provisions for a periodic assessment(s) by the municipal authorities of the franchisee's performance in living up to the terms and conditions of the franchise, particularly as these provisions relate to schools and the public interest. Such review should be made not less than once each year.

No FCC regulation on this point.

20. Transfer and Assignment Restrictions

NEA recommends:
The grantee of the franchise should not be permitted to transfer ownership or control of the franchise, or otherwise change the corporate structure, without approval of the granting authority and without public hearings affording due process.

No FCC regulation on this point.

OWNERSHIP OPTIONS

Before choosing the type of cable ownership desired, a community should consider and evaluate—in addition to the provisions described above—the following options:

(a) Commercial
A locality may feel that its interests are best served by granting the franchise to a profit-making entity. The vast majority of cable systems in the U.S. at the present time are commercial operations. When commercial systems are under consideration, questions should be raised concerning absentee ownership, concentration of ownership of media, and general economic concentrations within the local area. Full disclosure of all ownership particpants should be required. NEA recognizes that, financially, commercial ownership is a viable option to follow. However, one variation of the commercial pattern could be a situation wherein members of the local community own 100 percent of the shares in a local cable system.

(b) Government (Municipal)
The government authority granting the franchise could itself own the system. Where governmental ownership is the choice, the public should pay particular attention to ensuring that freedom of speech and access is safeguarded, even for groups that may disagree with the government. Approximately 20 cable systems in the nation are owned and operated by municipal governments.

(c) Nonprofit Corporation
The system could be owned by a nonprofit public organization or corporation. This could be a local teachers' association, university, school system, public broadcasting station, a foundation or any other nonprofit institution, a nonprofit community group, a consortium of many such groups, or some new nonprofit group organized for the specific purpose of operating the cable system.

(d) Joint Venture
It is possible for combinations of two or more of the above ownership options to own a system jointly. An example of such ownership would be a joint venture between a commercial cable system operator and a broad-based community organization. The profit-making organization would construct and market the system and raise most or all of the capital. The nonprofit partner would program the public service channels, have an equity position in the company, provide community liaison, and seek community participation.

The franchising authority should consider all of these possibilities for cable system ownership. In general, the community should attempt to spread

the economic power involved in ownership of mass communications. The franchising authority should avoid granting a cable system franchise to interests that already control commercial vehicles of communications. Manufacturers of cable system hardware and commercial program producers should not be granted franchises. By diversifying economic control of mass communications, the community can assure more competition in its communications media.

GLOSSARY

BROADBAND COMMUNICATIONS SYSTEM—A cable system.

CHANNEL—A band of standard and non-standard frequencies in the electromagnetic spectrum that are capable of carrying an audio-digital and/or an audio-visual television signal or signals.

COMMUNITY ANTENNA TELEVISION SYSTEM (Cable TV)—A Community antenna television system is usually composed of three basic parts:

1. A master head-end consisting of a master antenna, usually located on a high tower, and an equipment building with appropriate electronic gear necessary to receive, filter, translate, and amplify television signals for retransmission to the coaxial cable for distribution to homes, schools, etc.

2. A distribution system of coaxial cable and amplifiers that will be capable of carrying 5, 12, 20, 40, or even more video channels to the television receivers of individual subscribers.

3. A home television receiver that may or may not have a cable television converter and that will ultimately have a responder-computer attachment necessary for two-way communication.

   The concept was first implemented in the USA about 22 years ago merely as a community antenna transmission service to furnish viewers in rural or mountainous areas with clear, multichannel reception, but through the years, it has come to be known as cable television, encompassing a wide range of telecommunications services that can be carried by coaxial cable.

CONVERTER—Electronic device (which usually sits on top of a TV set) that converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, by an appropriate channel selector, permits a subscriber to view all signals delivered at a designated dial location.

DROPS—Individual connections from the main feeder trunk or distribution cable line to each school building or home.

EDUCATIONAL ACCESS CHANNELS—Channels on the cable system that are exclusively allocated by an ordinance or franchise for the carriage of educational/instructional program materials.

FEDERAL COMMUNICATIONS COMMISSION (FCC)—The federal regulatory body that oversees and sets guidelines for cable TV's full development on the national scene.

GROSS ANNUAL RECEIPTS—All revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parents, and any company in which the grantee has a financial interest from, or in connection with, the operation of the cable system, provided that this shall not include any taxes imposed directly upon any subscriber or user by the state, county government, or other governmental entity and collected by the grantee on behalf of said governmental unit.

HEAD-END—The electronic control center of the cable system where incoming signals are amplified, filtered, and converted to appropriate cable system channels.

IN-SCHOOL DISTRIBUTION SYSTEM—The distribution of the television signal to all classrooms throughout the school by means of a web of cable connected to the cable "drop" into the building from the main feeder trunk line. The distribution system operates in the same way as a master antenna system in a hotel, apartment, or school. It can also carry television signals from off-the-air, from ITFS, or from closed circuit sources.

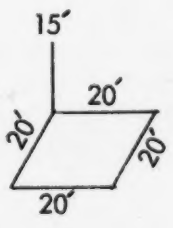
INSTRUCTIONAL TELEVISION FIXED SERVICE (ITFS)—The Federal Communications Commission opened 31 channels in the 2500-2690 megahertz frequency range for use by educational institutions and organizations primarily for the transmission of instructional and educational programs to schools and colleges. ITFS is a point-to-point service from a transmitter to one or more designated receiving locations. Although the signal is transmitted in much the same way as is the broadcast television signal, it requires a special receiving antenna and down converter unit and can be received only in those buildings so equipped. In short, ITFS is a private distribution system in which preselected receiving points are connected by radio frequency signals.

LEASED CHANNELS—In addition to the channels dedicated for special use (education, government, and public access) and over-the-air broadcast channels, the cable operator can lease the remainder of the channels on his system to groups or individuals for their use at a specified fee, or he may use some for his own purposes. The cable operator cannot control, censor, or otherwise interfere with the content of the program in any way.

LOCAL FRANCHISING AUTHORITY—Usually the city or county council or the board of selectmen in a town.

MINIMUM PRODUCTION CAPABILITY

1. Two live cameras (black and white)
2. Six-position audio console and microphones
3. One 16mm multiplex film/slide chain
4. Two 1" or 2-1/2" video tape machines
5. One 20' x 20' x 15' studio
6. Appropriate lighting facilities



N+1 PRINCIPLE—A formula devised by the FCC to insure that cable television systems will have a constantly expanding channel capacity. The formula will determine when a new channel must be made operational. The FCC rules (Report and Order, para. 126) read: "Whenever all operational channels are in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive three-hour period for six weeks running," the system operator must expand the system's capacity within six months.

OFF-AIR SIGNALS—Television signals broadcast over the air by television stations and received at a cable system's master head-end.

PUBLIC ACCESS CHANNEL—Channel or channels on the cable system that are exclusively reserved for carriage of programs furnished by persons who are provided free channel time on a first-come, first-served basis and, if necessary, who lease studio facilities and/or equipment from the grantee for the presentation of programs in accordance with an ordinance or franchise.

SECOND SET CHARGES—Charges levied by cable operators for connection to additional TV sets beyond the first connection, which is usually installed without cost in schools and designated public buildings, and for an installation fee in homes and commercial establishments.

STANDARD AND NON-STANDARD CHANNELS—Standard channels are those channels that can be tuned on a conventional TV set. Non-standard channels are found in the 6-megacycle band of frequencies that fall below Channel 2, between Channels 6 and 7, and above Channel 13; such channels cannot be used by broadcast television, because those frequencies are assigned for other purposes, but they can be used on the cable.

TOP 100 MARKETS—The ranking of the largest TV markets according to population size—i.e., potential audience size, number of TV sets in use, and number of viewers.

TRUNK LINE—The principal distribution cable used by cable television systems. This cable is usually carried through the streets on telephone or electric utility poles, or underground, usually through ducts.

TWO-CABLE SYSTEM—Dual cable—the use of two cables rather than one, usually installed side by side, to carry different signals.

TWO-WAY CAPACITY—Two-way capacity means that the subscriber or any other "location" shall have the capability to choose whether or not to respond immediately, or by sequential delay, by utilizing any type of terminal equipment whatever—pushbutton code, dial code, meter, voice, video signal, or any other means—to any type of electronic, including but not limited to audio and video, electrical or mechanically produced signal, display, and/or interrogation.

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FEDERAL REGISTER, VOL. 37, NO. 30—SATURDAY, FEBRUARY 12, 1972

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 72-108; Dockets Nos. 18397, 18397-A, 18673, 18416, 18892, and 18894]

CABLE TELEVISION SERVICE; CABLE TELEVISION RELAY SERVICE

I. Introduction

1. In our Notice of proposed rule making and notice of inquiry in Docket 18397, we launched an inquiry into the long-range development of cable television.[1] Our purpose was to explore:

> • • • [H]ow best to obtain, consistent with the public interest standard of the Communications Act, the full benefits of developing communications technology for the public, with particular immediate reference to CATV technology and potential services • • •

Though designed as a vehicle for eliciting comments and data, our notice recognized the variety of possible services that cable systems could offer. We did not attempt an all-inclusive listing of cable's potential uses, but took note of many.[2]

8. The preceding is illustrative of the range of regulatory controversy that has surrounded the cable television industry in recent years. Technological advances have multiplied the issues. At first, cable television systems served largely to provide subscribers with better quality reception and more channels of conventional broadcast television programing. While need for these services continues, increasingly sophisticated cable technology and cost reductions and improvements in the quality of program origination equipment have made possible increased channel capacity, low cost nonbroadcast programing, and a subscriber response capability. The confluence of these developments provides the basis for the next stage in cable television's evolution with which the rules now adopted are concerned. Additional services and further technological developments are under study as part of the industry's more distant future.

[2] "[F]acsimile reproduction of newspapers, magazines, documents, etc.; electronic mail delivery; merchandising; business concern links to branch offices, primary customers or suppliers; access to computers; e.g., man to computer communications in the nature of inquiry and response (credit checks, airlines reservations, branch banking, etc.), information retrieval (library and other reference material, etc.), and computer to computer communications; the furtherance of various governmental programs on a Federal, State, and municipal level; e.g., employment services and manpower utilization, special communications systems to reach particular neighborhoods or ethnic groups within a community, and for municipal surveillance of public areas for protection against crime, fire detection, control of air pollution and traffic; various educational and training programs; e.g., job and literacy training, preschool programs in the nature of 'Project Headstart,' and to enable professional groups such as doctors to keep abreast of developments in their fields; and the provision of a low cost outlet for political candidates, advertisers, amateur expression (e.g., community or university drama groups) and for other moderately funded organizations or persons desiring access to the community or a particular segment of the community." 15 FCC 2d 417, 420.

II. Television Broadcast Signal Carriage

Proposals and Alternatives

Educational Stations

94. The principal concern of noncommercial educational broadcasters with signal importation is not reduction in audience size but possible erosion of local support among cable television subscribers. The rule we are adopting will permit carriage of distant educational stations in the absence of objection from local educational stations or educational television authorities.

95. Educational television interests are concerned about such a rule only to the extent that it might involve them in difficult and expensive process. We recognize the difficulties that educational interests face if forced to spend time and money in protracted litigation before the Commission and will accordingly attempt to settle any questions that may arise through informal procedures. We will give their objections careful consideration, and will endeavor to work out accommodations that serve the public interest. In the absence of objection, however, the widest possible dissemination of educational and public television programing is clearly of public benefit and should not be restricted. The rules require cable systems to carry, on request, all educational stations within 35 miles and those placing a Grade B contour over the cable community. We are continuing to require that local educational stations and local and State educational authorities receive direct notification of proposals by cable television systems to carry educational stations. While all objections will be carefully considered, we do not ordinarily anticipate precluding carriage of State-operated educational stations in the same State as the cable community.

112. The Commission will issue public notices of all applications for certificates of compliance. Cable systems must give direct notice to local franchising authorities, local television stations, the superintendent of schools in the community, and local educational television authorities. Objections to proposed cable service may be made within 30 days after the Commission's public notice. Controversies concerning carriage (Subpart D) and network program exclusivity (§ 76.91) will be acted on in the certificating process if raised within 30 days of the public notice. Such matters may be raised at any time and will be considered under the special relief rules but outside the certificating process. The Commission will not certify new operations for 30 days after public notice and, whether or not objection is filed, a cable system may not commence new service before receipt of a certificate of compliance from the Commission.

III. Access to and Use of Nonbroadcast Channels

117. In its notice of proposed rule making in Docket 18894, the Commission stated that:

> Cable television offers the technological and economic potential of an economy of abundance.[4]

On the basis of the record now assembled, we believe the time has come for cable television to realize some of that potential within a national communications structure. We recognize that in any matter involving future projections, there are necessarily certain imponderables. These access rules constitute not a complete body of detailed regulations but a basic framework within which we may measure cable's technological promise, assess its role in our nationwide scheme of communications, and learn how to adapt its potential for energetic growth to serve the public.

Channel Capacity

118. Confronted with the need for more outlets for community expression on the one hand and, on the other, with cable television's capacity to provide an abundance of channels, we asserted in our second further notice of proposed rule making in Docket 18397-A the principle that the Commission "• • • must make an effort to ensure the development of sufficient channel availability on all new CATV systems to serve specific recognized functions." [5]

119. Most cable system operators and many others argue against the proposed establishment of a fixed minimum channel capacity. Some comments in Docket 18894 went further and suggested that the entire matter of channel capacity be left to experimentation.[6] While it is true that many existing cable systems have large channel capacities and seem at least technologically prepared to meet foreseeable demand, there are many systems apparently content to provide only broadcast signal carriage with no plans to expand service capabilities.

120. We envision a future for cable in which the principal services, channel uses, and potential sources of income will be from other than over-the-air signals. We note 40, 50, and 60 channel systems are currently being installed in some communities. The cost difference between building a 12 channel system and a 20 channel system would not appear to be substantial.[7] We urge cable operators and franchising authorities to consider that future demand may significantly exceed current projections, and we put them on notice that it is our intention to insist on the expansion of cable systems to accommodate all reasonable demands. We wish to proceed conservatively, however, to avoid imposing unreasonable economic burdens on cable operators. Accordingly, we will not require a minimum channel capacity in any except the top 100 markets. In these markets, we believe that 20 channel capacity (actual or potential) is the minimum consistent with the public interest. We also require that for each broadcast signal carried, cable systems in these markets provide an additional channel 6 MHz in width suitable for transmission of Class II or Class III signals. This seems a reasonable way to obtain necessary minimum channel capacity and yet gear it to particular community needs. We emphasize that the cable operator cannot accept the broadcast signals that will be made available without also accepting the obligation to provide the nonbroadcast bandwidth and the access services described below. The two are integrally linked in the public interest judgment we have made.

DESIGNATED CHANNELS

121. Broadcast signals are being used as a basic component in the establishment of cable systems, and it is therefore appropriate that the fundamental goals of a national communications structure be furthered by cable—the opening of new outlets for local expression, the promotion of diversity in television programing, the advancement of educational and instructional television, and increased informational services of local governments. Accordingly, cable television systems will have to provide one dedicated, noncommercial public access channel available without charge at all times on a first-come, first-served nondiscriminatory basis and, without charge during a developmental period, one channel for educational use and another channel for local government use. We have already imposed an obligation on systems with 3,500 or more subscribers to originate programing and are now requiring that the origination channels be specifically designated.

122. *Public access channel.* It has long been a Commission objective to foster local service in broadcasting. To this end we have encouraged the growth of UHF television, and have looked to all broadcast stations to provide community-oriented programing. We expect no less of cable. In our July 1, 1970 notice we stated:

> The structure and operation of our system of radio and television broadcasting affects, among other things, the sense of "community" of those within the signal area of the station involved. Recently governmental programs have been directed toward increasing citizen involvement in community affairs. Cable television has the potential to be a vehicle to much needed community expression.[9]

We believe there is increasing need for channels for community expression, and the steps we are taking are designed to serve that need. The public access channel will offer a practical opportunity to participate in community dialogue through a mass medium. A system operator will be obliged to provide only use of the channel without charge, but production cost (aside from live studio presentations not exceeding 5 minutes in length) may be charged to users.

123. *Educational access channel.* It is our intention that local educational authorities have access to one designated channel for instructional programing and other educational purposes. Use of the educational channel will be without charge from the time subscriber service is inaugurated until 5 years after the completion of the cable system's basic trunk line. After this developmental period—designed to encourage innovation in the educational uses of television—we will be in a more informed position to determine in consultation with State and local authorities whether to expand or curtail the free use of channels for such purposes or to continue the developmental period. The potential uses of the educational channel are varied. An important benefit promises to be greater community involvement in school affairs. It is apparent, for instance, that combined with two-way capability, the quality of instructional programing can be greatly enhanced. Similarly, some envision significant advances in the educational field by the linking of computers to cable systems with two-way capability.[9] For the present, we are only requiring that systems provide an educational channel and, as noted below, some return communication capability, and will allow experiments in this field to proceed apace.

124. *Government access channel.* The Government access channel is designed to give maximum latitude for use by local governments. The suggestions for use range across a broad spectrum and it is premature to establish precise requirements. As with the educational channel, use of the Government channel will be free from the time subscriber service is inaugurated until 5 years after the completion of the cable system's basic trunk line, at which time we will consider whether to expand or curtail such free use or to continue the developmental period.

LEASED ACCESS CHANNELS

125. In addition to the designated channels and broadcast channels, cable systems shall make available for leased use the remainder of the required bandwidth and any other available bandwidth (e.g., if a channel carrying broadcast programing is required to be blacked out because of our exclusivity rules or is otherwise not in use, that channel also may be used for leased access purposes). Additionally, to the extent that the public, education, and Government access channels are not being used, these channels may also be used for leased operation. But such operations may only be undertaken on the express condition that they are subject to immediate displacement if there is demand to use the channel for the dedicated purpose.

EXPANSION OF CAPACITY

126. Our basic goal is to encourage cable television use that will lead to constantly expanding channel capacity. Cable systems are therefore required to make additional bandwidth available as the demand arises. There are a number of ways to meet this general objective. Initially, we intend to use the following formula to determine when a new channel must be made operational: whenever all operational channels are in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive 3-hour period for 6 weeks running, the system will then have 6 months in which to make a new channel available. This requirement should encourage use of the system with the knowledge that channel space will always be available, and also encourage the cable operator continually to expand and update his system. On at least one of the leased channels part-time users must be given priority. We plan at a later date to institute a proceeding with a view to assuring that our requirement of capacity expansion is not frustrated through rate manipulation or by any other means. This proceeding will also deal with such open questions as rates charged for leased channel operations.

127. We are aware of the possibility that the formula may impose undue burdens on system operations. If it were necessary to rebuild or add extensive new plant, this could not reasonably be expected within a 6-month period. The requirement for activating new capacity within 6 months is based on our understanding that only relatively modest effort is involved in converting existing potential to actual capacity. These considerations, however, point up the necessity for building now with a potential that takes the future into account. Because this part of our program is a relatively uncharted area, we will make it a matter for continuing regulatory concern.

TWO-WAY CAPACITY

128. On review of the comments received and our own engineering estimates, we have decided to require that there be built into cable systems the capacity for return communication on at least a non-voice basis. Such construction is now demonstrably feasible.[9] Two-way communication, even rudimentary in nature, can be useful in a number of ways—for surveys, marketing services, burglar alarm devices, educational feedback, to name a few.

129. We are not now requiring cable systems to install necessary return communication devices at each subscriber terminal. Such a requirement is premature in this early stage of cable's evolution. It will be sufficient for now that each cable system be constructed with the potential of eventually providing return communication without having to engage in time-consuming and costly system rebuilding. This requirement will be met if a new system is constructed either with the necessary auxiliary equipment (amplifiers and passive devices) or with equipment that could easily be altered to provide return service. When offered, activation of the return service must always be at the subscriber's option.

REGULATIONS APPLICABLE TO CHANNELS PRESENTING NONBROADCAST PROGRAMING

130. We now turn to the question of the regulation of access channels presenting nonbroadcast programing. We believe that such regulation is properly the concern of this Commission. These channels fulfill Communications Act purposes and, in the context of our total program, are integrally bound up with the broadcast signals being carried by cable. It is by no means clear that the viewing public will be able to distinguish between a broadcast program and an access program; rather, the subscriber will simply turn the dial from broadcast to access programing, much as he now selects television fare. Moreover, leased channels will undoubtedly carry interconnected programing via satellite or interstate terrestrial facilities, matters that are clearly within the Commission's jurisdiction. Finally, it is this Commission that must make the decisions as to conditions to be imposed on the operation of pay cable channels, and we have already taken steps in that direction. (See § 76.225). Federal regulation is thus clearly called for.

131. There remains the issue of whether also to permit State or local regulation of these channels where not inconsistent with Federal purposes. We think that in this area a dual form of regulation would be confusing and impracticable. Our objective of allowing a period for experimentation might be

[9] We note the recent developments in this field by Sterling Manhattan Cable TV in New York City and Telecable Corp. in Overland Park, Kans.

jeopardized if, for example, a local entity were to specify more restrictive regulations than we have prescribed. Thus, except for the Government channel, local regulation of access channels is precluded. If experience and further proceedings indicate its need or desirability, we can then delineate an appropriate local role.[*]

132. Because of the Federal concern, local entities will not be permitted, absent a special showing, to require that channels be assigned for purposes other than those specified above. We stress again that we are entering into an experimental or developmental period. Thus, where the cable operator and franchising authority wish to experiment by providing additional channel capacity for such purposes as public, educational, and Government access—on a free basis or at reduced charges—we will entertain petitions and consider the appropriateness of authorizing such experiments, to gain further insight and to guide future courses of action.[*] In communities outside the top 100 markets where access channels are not required by the Commission, we will permit local authorities to require access services, so long as they are not in excess of what we require for the major markets.

133. The question of what regulations we should impose at this time is most difficult. Our judgments on how these access services will evolve are at best intuitive. We believe that the best course is to proceed with only minimal regulation in order to obtain experience. We emphasize, therefore, that the regulatory pattern is interim in nature—that we may alter the program as we gain the necessary insights.

PRODUCTION FACILITIES

142. It is apparent that our goal of creating a low-cost, nondiscriminatory means of access cannot be attained unless members of the public have reasonable production facilities available to them. We expect that many cable systems will have facilities with which to originate programing that will also be available to produce program material for public access. Hopefully, colleges and universities, high schools, recreation departments, churches, unions, and other community groups will have low-cost video-taping equipment for public use. In any event, we are requiring that the cable operator maintain within the franchise area production facilities for use on the public access channel.

143. In this experimental stage, it would be self-defeating to require cable systems to carry access programing and at the same time meet stringent technical standards. Thus, for the present, our technical standards will apply only to Class I channels (those used to distribute broadcast programing—see § 76.5(z) of the rules). We note specifically that the use of half-inch video tape is a growing and hopeful indication that low-cost recording equipment can and will be made available to the public. While such equipment does not now meet our technical standards for broadcasting, there is promise of its improvement and refinement. Further, since it provides and inexpensive means of program production, we see no reason why technical development of this nature should not be encouraged for use on cable systems.

144. Elaborate suggestions have been made for comprehensive community control plans such as neighborhood origination centers and neighborhood councils to oversee access channels. Here again the Commission will encourage experimentation rather than trying to impose a more formal structure at this time.

APPLICABILITY

147. These access rules will be applicable to all new systems that become operational after March 31, 1972 in the top 100 television markets. Currently operating systems in those markets will have 5 years to comply fully with this section. We focus here on the top 100 markets because we have selected these markets as the recipients of certain benefits in order to stimulate cable growth. But, correspondingly, that growth should be accompanied by accesss obligations if the public is to receive the full benefits of this program. Further, cities in the top 100 markets have, as a general rule, more diverse minority groups (ethnic, racial, economic, or age) who are most greatly in need of both an opportunity to express their views and a more efficient method by which they can be apprised of governmental actions and educational opportunities. To the extent that the access requirements pose problems for systems operating in small communities in major markets, such systems are free to meet their obligations through joint building and related programs with cable operators in the larger core areas.

148. If these requirements should impose an undue burden on some isolated system, that is a matter to be dealt with in a waiver request, with an appropriate detailed showing. While we encourage systems in markets below the top 100 to provide access channels, we are not at this time requiring them to do so. We will permit local franchising authorities in such areas to require systems to provide access service, but to no greater extent than we have specified for systems in the top markets. In that event, our access rules would be applicable.

IV. TECHNICAL STANDARDS

178. *Franchising.* We are requiring that before a cable system commences operation with broadcast signals, it must obtain a certificate of compliance from the Commission. The application for such a certificate must contain (§ 76.31 (a)(1)) a copy of the franchise and a detailed statement showing that the franchising authority has considered in a public proceeding the system operator's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of construction arrangements. We expect that franchising authorities will publicly invite applications, that all applications will be placed on public file, that notice of such filings will be given, that where appropriate a public hearing will be held to afford all interested persons an opportunity to testify on the qualifications of the applicants, and that the franchising authority will issue a public report setting forth the basis for its action. Such public participation in the franchising process is necessary to assure that the needs and desires of all segments of the community are carefully considered.

180. *Franchise area.* Another matter uniquely within the competence of local authorities is the delineation of franchise areas. We emphasize that provision must be made for cable service to develop equitably and reasonably in all parts of the community. A plan that would bring cable only to the more affluent parts of a city, ignoring the poorer areas, simply could not stand. No broadcast signals would be authorized under such circumstances. While it is obvious that a franchisee cannot build everywhere at once within a designated franchise area, provision must be made that he develop service reasonably and equitably. There are a variety of ways to divide up communities; the matter is one for local judgment.

181. *Construction.* We are establishing in § 76.31(a)(2) general timetables for construction and operation of systems to insure that franchises do not lie fallow or become the subject of trafficking. Specifically, we are providing that the franchise require the cable system to accomplish significant construction within 1 year after the certificate of compliance is issued, and that thereafter energized trunk cable be extended to a substantial percentage of the franchise area each year, the percentage to be determined by the franchising authority. As a general proposition, we believe that energized trunk cable should be extended to at least 20 percent of the franchise area per year, with the extension to begin within 1 year after the Commission issues its certificate of compliance. But we have not established 20 percent as an inflexible figure, recognizing that local circumstances may vary.[*]

[*] We are aware that bidding contests may result in awards that will unduly burden systems and possibly thwart achievement of our basic goals. We caution franchising authorities against encouraging such contests or making selections based on the barter of extra channels. If abuses arise in this respect, they will be examined in the course of the certificating process or on later petition.

182. *Franchise duration.* We are requiring in § 76.31(a)(3) that franchising authorities place reasonable limits on the duration of franchises. Long terms have generally been found unsatisfactory by State and local regulatory authorities,[77] and are an invitation to obsolescense in light of the momentum of cable technology.[78] We believe that in most cases a franchise should not exceed 15 years and that renewal periods be of reasonable duration. We recognize that decisions of local franchising authorities may vary in particular circumstances. For instance, an applicant's proposal to wire inner-city areas without charge or at reduced rates might call for a longer franchise. On the other hand, we note that there is some support for franchise periods of less than 15 years.[79]

185. *Franchise fee.* While we have decided against adopting a 2 percent limitation on franchise fees, we believe some provision is necessary to insure reasonableness in this respect. First, many local authorities appear to have exacted high franchise fees more for revenue-raising than for regulatory purposes. Most fees are about 5 or 6 percent, but some have been known to run as high as 36 percent. The ultimate effect of any revenue-raising fee is to levy an indirect and regressive tax on cable subscribers. Second, and of great importance to the Commission, high local franchise fees may burden cable television to the extent that it will be unable to carry out its part in our national communications policy.[80] Finally, cable systems are subject to substantial obligations under our new rules and may soon be subject to congressionally-imposed copyright payments. We are seeking to strike a balance that permits the achievement of Federal goals and at the same time allows adequate revenues to defray the costs of local regulation.

186. The Commission imposes an annual fee of 30 cents per subscriber to help finance its own cable regulatory program. Assuming average annual revenues to the cable system of $60 per subscriber, the Commission's fee amounts to one-half of 1 percent of a system's gross receipts. The regulatory program to be carried out by local entities is different in scope and may vary from jurisdiction to jurisdiction. It is our judgment that maximum franchise fees should be between 3 and 5 percent of gross subscriber revenues. But we believe it more appropriate to specify this percentage range as a general standard, for specific local application. When the fee is in excess of 3 percent (including all forms of consideration, such as initial lump sum payments), the franchising authority is required to submit a showing that the specified fee is appropriate in light of the planned local regulatory program, and the franchisee must demonstrate that the fee will not interfere with its ability to meet the obligations imposed by our rules.

*Please see later version of Section 76.7 (marked) on page

PART 76—CABLE TELEVISION SERVICE

Subpart A—General

§ 76.7 **Special relief.**

(a) Upon petition by a cable television system, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(b) The petition may be submitted informally, by letter, but shall be accompanied by an affidavit of service on any cable television systems, station licensee, permittee, applicant, or other interested person who may be directly affected if the relief requested in the petition should be granted.

(c) (1) The petition shall state the relief requested and may contain alternative requests. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for a ruling on a complaint or disputed question shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(d) Interested persons may submit comments or opposition to the petition within thirty (30) days after it has been filed. For good cause shown in the petition, the Commission may, by letter or telegram to known interested persons, specify a shorter time for such submissions. Comments or oppositions shall be served on petitioner and on all persons listed in petitioner's affidavit of service, and shall contain a detained full showing, supported by affidavit, of any facts or considerations relied on.

(e) The petitioner may file a reply to the comments or oppositions within twenty (20) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

Subpart C—Federal-State/Local Regulatory Relationships

§ 76.31 **Franchise standards.**

(a) In order to obtain a certificate of compliance, a proposed or existing cable television system shall have a franchise or other appropriate authorization that contains recitations and provisions consistent with the following requirements:

(1) The franchisee's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the franchising authority as part of a full public proceeding affording due process;

(2) The franchisee shall accomplish significant construction within one (1) year after receiving Commission certification, and shall thereafter equitably and reasonably extend energized trunk cable to a substantial percentage of its franchise area each year, such percentage to be determined by the franchising authority;

(3) The initial franchise period and any renewal franchise period shall be of reasonable duration;

(4) The franchising authority has specified or approved the initial rates which the franchisee charges subscribers for installation of equipment and regular subscriber services. No changes in rates charged to subscribers shall be made except as authorized by the franchising authority after an appropriate public proceeding affording due process;

(5) The franchise shall specify procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions, and similar matters, and shall require that the franchisee maintain a local business office or agent for these purposes;

(6) Any modifications of the provisions of this section resulting from amendment by the Commission shall be incorporated into the franchise within one (1) year of adoption of the modification, or at the time of franchise renewal, whichever occurs first: *Provided, however,* That, in an application for certificate of compliance, consistency with these requirements shall not be expected of a cable television system that was in operation prior to March 31, 1972, until the end of its current franchise period, or March 31, 1977, whichever occurs first.

(b) The franchise fee shall be reasonable (e.g., in the range of 3–5 percent of the franchisee's gross subscriber revenues per year from cable television operations in the community (including all forms of consideration, such as initial lump sum payments)). If the franchise fee exceeds 3 percent of such revenues, the cable television system shall not receive Commission certification until the reasonableness of the fee is approved by the Commission on showings, by the franchisee, that it will not interfere with the effectuation of Federal regulatory goals in the field of cable television, and, by the franchising authority, that it is appropriate in light of the planned local regulatory program. The provisions of this paragraph shall not be effective with respect to a cable television system that was in operation prior to March 31, 1972, until the end of its current franchise period, or March 31, 1977, whichever occurs first.

Subpart G—Cablecasting

§ 76.201 Origination cablecasting in conjunction with carriage of broadcast signals.

(a) No cable television system having 3,500 or more subscribers shall carry the signal of any television broadcast station unless the system also operates to a significant extent as a local outlet by origination cablecasting and has available facilities for local production and presentation of programs other than automated services. Such origination cablecasting shall be limited to one or more designated channels which may be used for no other purpose.

§ 76.251 Minimum channel capacity; access channels.

(a) No cable television system operating in a community located in whole or in part within a major television market, as defined in § 76.5, shall carry the signal of any television broadcast station unless the system also complies with the following requirements concerning the availability and administration of access channels:

(1) *Minimum channel capacity.* Each such system shall have at least 120 MHz of bandwidth (the equivalent of 20 television broadcast channels) available for immediate or potential use for the totality of cable services to be offered;

(2) *Equivalent amount of bandwidth.* For each Class I cable channel that is utilized, such system shall provide an additional channel, 6 MHz in width, suitable for transmission of Class II or Class III signals (see § 76.5 for cable channel definitions);

(3) *Two-way communications.* Each such system shall maintain a plant having technical capacity for nonvoice return communications;

(4) *Public access channel.* Each such system shall maintain at least one specially designated, noncommercial public access channel available on a first-come, nondiscriminatory basis. The system shall maintain and have available for public use at least the minimal equipment and facilities necessary for the production of programing for such a channel. See also § 76.201;

(5) *Education access channel.* Each such system shall maintain at least one specially designated channel for use by local educational authorities;

(6) *Local government access channel.* Each such system shall maintain at least one specially designated channel for local government uses;

(7) *Leased access channels.* Having satisfied the origination cablecasting requirements of § 76.201, and the requirements of subparagraphs (4), (5), and (6) of this paragraph for specially designated access channels, such system shall offer other portions of its nonbroadcast bandwidth, including unused portions of the specially designated channels, for leased access services. However, these leased channel operations shall be undertaken with the express understanding that they are subject to displacement if there is a demand to use the channels for their specially designated purposes. On at least one of the leased channels, priority shall be given part-time users;

(8) *Expansion of access channel capacity.* Whenever all of the channels described in subparagraphs (4) through (7) of this paragraph are in use during 80 percent of the weekdays (Monday–Friday) for 80 percent of the time during any consecutive 3-hour period for 6 consecutive weeks, such system shall have 6 months in which to make a new channel available for any or all of the above-described purposes;

(9) *Program content control.* Each such system shall exercise no control over program content on any of the channels described in subparagraphs (4) through (7) of this paragraph; however, this limitation shall not prevent it from taking appropriate steps to insure compliance with the operating rules described in subparagraph (11) of this paragraph;

(10) *Assessment of costs.* (i) From the commencement of cable television service in the community of such system until five (5) years after completion of the system's basic trunk line, the channels described in subparagraphs (5) and (6) of this paragraph shall be made available without charge.

(ii) One of the public access channels described in subparagraph (4) of this paragraph shall always be made available without charge, except that production costs may be assessed for live studio presentations exceeding 5 minutes. Such production costs and any fees for use of other public access channels shall be consistent with the goal of affording the public a low-cost means of television access;

(11) *Operating rules.* (i) For the public access channel(s), such system shall establish rules requiring first-come nondiscriminatory access; prohibiting the presentation of: Any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter (modeled after the prohibitions in §§ 76.213 and 76.215, respectively); and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of 2 years.

(ii) For the educational access channel(s), such system shall establish rules prohibiting the presentation of: Any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter (modeled after the prohibitions in §§ 76.213 and 76.215, respectively) and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of 2 years.

(iii) For the leased channel(s), such system shall establish rules requiring first-come, nondiscriminatory access; prohibiting the presentation of lottery information and obscene or indecent matter (modeled after the prohibitions in §§ 76.213 and 76.215, respectively); requiring sponsorship identification (see § 76.221); specifying an appropriate rate schedule and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of 2 years.

(iv) The operating rules governing public access, educational, and leased channels shall be filed with the Commission within 90 days after a system first activates any such channels, and shall be available for public inspection at the system's offices. Except on specific authorization, or with respect to the operation of the local government access channel, no local entity shall prescribe any other rules concerning the number or manner of operation of access channels; however, franchise specifications concerning the number of such channels for systems in operation prior to March 31, 1972, shall continue in effect.

(b) No cable television system located outside of all major television markets shall enter into any contract, arrangement, or lease for use of its cablecasting facilities which prevents or inhibits the use of such facilities for a substantial portion of time (including the time period 6–11 p.m.) for local programing designed to inform the public on controversial issues of public importance.

PART 78—CABLE TELEVISION RELAY SERVICE

Subpart B—Applications and Licenses

§ 78.11 Permissible service.

(a) Cable television relay stations are authorized to relay television broadcast and related audio signals, the signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting intended for use solely by one or more cable television systems. LDS stations are authorized to relay television broadcast and related audio signals, the signals of standard and FM broadcast stations, signals of instructional television fixed stations, cablecasting, and such other communications as may be authorized by the Commission. Relaying includes retransmission of signals by intermediate relay stations in the system. CAR licensees may interconnect their facilities with those of other CAR or common carrier licensees, and may also retransmit the signals of such CAR or common carrier stations, provided that the program material retransmitted meets the requirements of this paragraph.

FEDERAL REGISTER, VOL. 37, NO. 136—FRIDAY, JULY 14, 1972

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18397 etc.; FCC 72-530]

PART 1—PRACTICE AND PROCEDURE PART 76—CABLE TELEVISION SERVICE

Reconsideration of Report and Order

ACCESS TO AND USE OF NONBROADCAST CHANNELS

75. *Smaller market minimum channel capacity.* Publi-Cable, Inc. suggests that we complement the minimum channel capacity rules with a requirement that new systems in smaller markets have a minimum of 12 channels and that existing systems in these markets have 5 years (or until the renewal of their franchises, whichever occure first) to attain a 12-channel capacity.

79. We do not find these arguments persuasive. In our rules dealing with channel capacity, our goal was to insure that cable systems in major markets would not underbuild. "We urge[d] cable operators and franchising authorities to consider that future demand may significantly exceed current projections, and we put them on notice that it is our intention to insist on the expansion of cable systems to accommodate all reasonable demands."[*] We believe this consideration to be controlling and find it difficult to believe that cable operators will not carry all the broadcast signals available to them.

80. *Number of designated access channels.* Publi-Cable, Inc., the National Association of Educational Broadcasters (NAEB), and the National Education Association (NEA) have questioned what they regard as an unduly severe limitation on the number of designated access channels to be provided by cable systems pursuant to § 76.251(a) (4), (5), and (6) of the rules. They argue, particularly with respect to educational channels, that the potential for use far exceeds the limit of one channel. NEA has suggested, once more, that a minimum of 20 percent of system capacity be set aside for educational use.

81. It should be noted at the outset that, while one educational access channel is the minimum required, we specifically provide in § 76.251(a)(8) for adding more access channels should the need for such channels be adequately demonstrated. Thus we envision an orderly growth of access channels, linked to demand.[*] In addition, in the Cable Television Report and Order we stated that after a developmental period (to begin from the commencement of service until 5 years after completion of the basic trunk line) "designed to encourage innovation in the educational uses of television—we will be in a more informed position to determine in consultation with State and local authorities whether to expand or curtail the free use of channels for such purposes or to continue the developmental period."[*] Clearly, as we have stated, this is an area which we will revisit. But without the further knowledge which can be gained only from allowing cable systems to experiment within our initial framework, we are not inclined to add extra burdens to the access requirements. Finally, we are in no way restricting arrangements between the local entity and the cable operator to provide specified numbers of channels for educational purposes on a paid basis. Such arrangements constitute the very type of new service which cable can and should provide. Further, we will entertain petitions from the franchising authority and the cable system when they wish to experiment with additional designated channels on a free basis or at reduced rates.

FEDERAL-STATE/LOCAL RELATIONSHIPS

110. *Multiple franchising.* Publi-Cable, Inc., urges the Commission to adopt more comprehensive rules encouraging multiple franchise arrangements for large cities and promoting more citizen participation. As we noted in the Cable Television Report and Order, we are looking forward to a period of experimentation in the development of cable television. While Publi-Cable's comments on the desirability of multiple franchising and citizen participation are valuable and hopefully will be implemented in various localities, it would be premature at this time to institute specific comprehensive rules of this nature. We are attempting to give great latitude to local entities to experiment with the various regulatory and franchising modes for cable television. We do not wish to hamper that flexibility any more than is necessary.

111. *Franchise duration.* Publi-Cable also argues that franchises should be limited to 10 years, with renewal periods not to exceed 3 years. In § 76.31(a)(3) of our rules, we required only that initial franchise periods and renewals be of "reasonable duration." We noted in the report and order, however, our general belief that a franchise period should not exceed 15 years. While there may be situations where a 15-year franchise period is inappropriate, it appears to be a reasonable point of departure. Because our requirement of "reasonable duration" seems to have confused some parties, we have decided that our rules should more directly reflect the statements made in the report and have therefore now set 15 years as the standard to be followed (See revised § 76.31(a)(3)). If good cause can be shown in a particular instance for some other franchise period, we will of course entertain such a documented showing in a petition for special relief.

114. *Interconnection of franchise areas.* The National Association of Educational Broadcasters is concerned with how cable is to develop to assure the interconnection of franchise areas (regionally or statewide) and the adequate planning of equitable service expansion from urban to rural areas. Petitioner argues that local officials may not be able to meet such a challenge for compatible development and interconnection across political boundaries. Again, we feel that it would be premature to codify such rules as the petitioner suggests. However, we do agree with the NAEB that such guidelines should be identified as a priority problem for the Cable Television Advisory Committee on Federal-State/local relationships.

APPENDIX A

§ 76.7 Special relief.

(a) On petition by a cable television system, a franchising authority, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(b) The petition may be submitted informally, by letter, but shall be accompanied by an affidavit of service on any cable television system, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested in the petition should be granted.

[*] Cable Television Report and Order, paragraph 120. The question has arisen whether we have preempted the area of channel capacity so that local governmental entities could not require more than twenty channel capacity or more than required under the equal bandwidth rule, § 76.251(a)(2). We believe that our requirement for expansion of channel capacity will insure that cable systems will be constructed with sufficient capacity. However, if a local governmental entity considers that greater channel capacity is needed than is required under the rules, we would not foreclose a system from meeting local requirements upon a demonstration of need for such channel capacity and the system's ability to provide it. A similar question has been raised with respect to two-way capability. We find no reason why a cable operator wishing to experiment with a more sophisticated two-way capability than that which we have required should be precluded from doing so. However, we do not believe that franchising authorities should require more than we have provided for in our rule because it is possible that any such requirement will exceed the state of the art or place undue burdens on cable operators in this stage of cable development in the major markets. Where a franchising authority has a plan for actual use of a more sophisticated two-way capability and the cable operator can demonstrate its feasibility both practically and economically we will consider, in the certificating process, allowing such a requirement.

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August 22, 1972 - G

FRANCHISE PROVISIONS AT VARIANCE WITH FCC CABLE TELEVISION RULES

The following letter has been sent to Western Communications, Inc. by Sol Schildhause, Chief of the Cable Television Bureau, in response to an inquiry about the extent to which Federal-State/local franchising authorities can establish regulations which are different from those established by the FCC for cable television systems:

This is in reply to your letter of August 3, 1972, in which you question the extent to which franchising authorities can establish regulations in excess of or different than the regulations established by the Commission in the Cable Television Report and Order. I have taken the liberty of combining some of your questions and re-phrasing others for purposes of clarity.

1. Q. May a franchising authority in a major television market specify a minimum channel capacity in excess of 20 channels?

   A. In footnote 25 of the Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order, the Commission stated that while it has preempted the area of channel capacity, it would not foreclose a system from meeting more stringent local requirements. . . "upon a demonstration of need for such channel capacity and the system's ability to provide it." (emphasis supplied) Also see paragraph 132 and footnote 70 of the Cable Television Report and Order.

2. Q. May a franchising authority outside a major market specify a minimum channel capacity and, if so, can this minimum channel capacity be in excess of what this Commission requires for a major market?

   A. Cities outside major markets may specify a minimum channel capacity, but such capacity may not be in excess of what the Commission requires for systems in major markets. See Section 76.251(b) of the Rules and paragraph 148 of the Cable Television Report and Order.

(over)

3. Q. May a franchising authority located outside a major television market require a cable system to maintain a plant having the technical capacity for nonvoice return communications?

   A. Yes - see Section 76.251(b) of the Commission's Rules and paragraphs 132 and 148 of the Cable Television Report and Order.

4. Q. May any franchising authority require a more sophisticated form of return communications?

   A. In footnote 25 of the Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order the Commission stated, "Where a franchising authority has a plan for actual use of a more sophisticated two-way capability and the cable operator can demonstrate its feasibility both practically and economically, we will consider, in the certificating process, allowing such equipment". (emphasis supplied)

5. Q. Can a franchising authority require all access services to be made available at no charge?

   A. No - The Commission will consider in the certificating process, however, requirements that additional public access channels or some educational channels be offered at no charge or at reduced cost on an experimental basis. See paragraph 132 of the Cable Tevevision Report and Order.

6. Q. Can a franchising authority require the franchisee to make available more access channels than those specified by the Commission?

   A. No - unless during the certificating process the Commission is shown that such additional channels are necessary and capable of being used according to an existing, viable plan. See Section 76.251 (a)(11)(iv) of the Rules, and paragraph 132 of the Cable Television Report and Order.

7. Q. Can a franchising authority require a franchisee to provide access services outside major markets?

   A. Yes - but to no greater extent than the Commission requires for systems in major markets. See Section 76.251(b) and paragraphs 132 and 148 of the Cable Television Report and Order.

8. Q. May a franchising authority impose a franchise fee based upon revenues derived from "auxiliary" services such as advertising revenues, leased channel revenues, pay cable revenues, etc.?

A. No - Subscriber revenues are considered to be those revenues derived from regular subscriber services - i.e., the carriage of broadcast signals and required non-broadcast services.

9. Q. May a franchising authority insist on a franchise fee higher than 3% if the excess fee is to be used for funding public access services?

A. There is no hard and fast answer to this question at present. Clearly, however, the factors that would bear heavily in the Commission's consideration of any such scheme would include the amount of excess fee, the danger that, through funding, local governments would control public access programming, and the possibility of other alternatives.

10. Q. May a franchising authority require a faster construction schedule than that suggested by the Commission?

A. Yes - See Section 76.31(a)(2) of the Commission's Rules.

11. Q. May a franchising authority require systems with fewer than 3500 subscribers to engage in local origination?

A. The Commission has preempted this field. See paragraph 48, First Report and Order, 20 FCC 2d 201, at 223. See also "Clarification of CATV First Report as to Scope of Federal Pre-Emption," 20 FCC 2d 741. Under these circumstances, I believe the Commission would reject such a requirement. Further, the Commission preemption extends to policy concerning any waiver of the origination rule.

12. Q. May a franchising authority establish technical standards in excess of those required by the Commission?

A. Yes - (See paragraph 91 of the Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order) The Commission will not, however, assume responsibility for enforcement of more stringent technical standards. Local authorities should therefore be prepared to assume the burden of such enforcement.

(over)

13. Q. May a franchising authority limit a franchisee to providing services that can be performed only by the franchisee itself?

A. No - Clearly the concept of access services is to offer the benefits of a multiplicity of channels to the public. Thus in Sections 76.251(a)(11)(i) and (iii), system operators are specifically forbidden to exercise control over the program content of public and leased access channels.

The foregoing responses to your questions should indicate the degrees to which the Commission will sanction franchise provisions at variance with its cable regulatory program. Where variances are sought, as for instance where a franchise calls for extra access channels, greater channel capacity, or a higher franchise fee, detailed showings will be required during the certificating process. If such a showing is inadequate, the Commission will not issue a certificate of compliance.

It is recommended, therefore, that franchises be drawn to include severability clauses that will enable the Commission to authorize system operations without the delay that might be created by the necessity for franchise amendments.

I hope the foregoing is responsive to your inquiry. If I can be of further assistance to you, do not hesitate to call on me.

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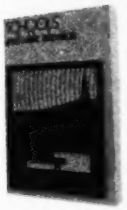

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